In the High Court of Uttaranchal, at Nainital.
First Appeal No. 28/2002

1- State of Uttaranchal, through Collector
Tehri Garhwal.
2- Tehri Jal Vikash Nigam, through
Its Managing Director ….. Opp.Parties/Appellants.

Versus

1- Mohan Lal Negi S/o Inder Singh Negi.
2- Smt. Shakuntal Devi W/o Mohan Lal Negi.,

Both are R/o Ward No.2, Purana Darbar, Tehri
District Tehri Garhwal .Claimants/Respondents.

Sri U.P.S. Negi, Addl. Advocate General, for the appellants.
Sri Rajendra Dobhal, Advocate for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 11th May, 2006.

The appellants have filed this First Appeal, under Section 54 of the Land Acquisition Act praying for setting aside the judgment and decree dated 6-11-2001 passed by the District Judge, Tehri Garhwal in Land Acquisition Reference No. 5 of 1986, Mohan Lal Negi and another versus State of Uttaranchal and another and to affirm the award dated 23-2-1985 given by the Special Land Acquisition Officer (Irrigation), Tehri Garhwal.

2- The facts giving rise to the present appeal are that 8962 Sq. Ft. land of the claimants/respondents comprising of 1124 Sq. Ft. house, 1670 Sq. Chowk and 6168 Sq. Ft. orchard/ kitchen garden at the rate of Rs. 6/- per Sq. Ft. was acquired for the purpose of construction of the Tehri Dam as the entire Tehri town was expected to submerge into water. Notification U/S 4 (1) of the Land Acquisition Act (hereinafter referred as the 'Act') was published on 22-1-1983. Thereafter notification U/S 6 of the Act was issued on 8-10-1983.The Special Land Acquisition Officer awarded the compensation on two heads. In the first head Rs. 53,772-00 as compensation for the total land acquired and on this amount also awarded Rs. 16,131.60, @30% solatium and additional amount of Rs. 13,064.39 @ 12% per annum the total being Rs. 82,967=99. In the second head Rs. 2,97,172-00 as cost

of the house and Rs. 880-10 as cost of the trees standing on the acquired land and on this amount also awarded additional amount of Rs. 72,200-58 @ 12% per annum and solatium of Rs. 89,151.60 @ 30%, the total being Rs. 4,59,404.28. In this way total compensation Rs. 5,42,372=27 was awarded by the S.L.A.O. to the claimant/respondent.

3- Aggrieved by the Award of the Special Land Acquisition Officer, a reference was preferred under Section 18 of the Land Acquisition Act before the District Judge, Tehri Garhwal being Land Acquisition Reference no. 5/1986.

4- Before the District Judge, the claimants/respondent had claimed that he had many varieties of fruit bearing trees in his land and has claimed Rs. 50,000/- for it and Rs. 5000/- for other beautifying trees which have not been taken into account properly by the S.L.A. O. The claimant also alleged that the cost of material has not been given to him according to its quality, which was brought from distant areas. It was also alleged that less compensation was paid to him for the wooden work, foundation, thickness of lintel, wash basin and its pipe-fitting amounting to Rs. 75000`/-. It was also alleged that the Tehri town is the headquarter of the District and all the Officers, Kutchery, Schools, Colleges, Tehsil etc are located here and the city also has historical importance. The land of the petitioner was in the vicinity of main market and should have been fetched Rs. 50/- per Sq. Ft. It was also alleged that the sale deeds considered by the SLAO pertain to the lands totally otherwise located and could not have been applied to his land. He also claimed compensation for diminution of his legal profession for five years @ Rs. 20,000/-; for shifting residence Rs. 20,000/- and Rs. 15000/- for rehabilitation allowance to petitioner/respondent No.2 who is a teacher. It was also alleged that they have adverse possession since 1970 over some land belonging to one Smt. Revti Devi and for this land they are entitled for compensation.

5- The State Government (the appellant here) contested the case of the claimant and refuted the contention of the claimant. It was also pleaded that the S.L.A.O. has awarded the compensation

for 8962 Sq. Ft. land on the basis of the possession of the claimant. Every item of the house of the petitioner has been measured and valued according to the quality of material. Compensation of trees was also awarded according to rules. Payment of material has been made according to the approved prevailing rates at the time of valuation. It was also alleged that rehabilitation allowance @ Rs. 2000/- per family is payable at the time of handing over the possession of the property, and not to individual person. It was also pleaded that all the courts have been shifted at one place at New Tehri and so there will be no loss to the legal profession of the petitioner No.1.

6- On the pleadings of the parties the District Judge framed the following issues.

1- What is the proper market value of the land in question on the date of notification U/S 4(1) of the Act?

2- What is the proper value of the building on the land in question on the date of notification U/S 4(1) of the Act?

3- What is the proper and adequate compensation of the property in question?.

4- To what relief, if any, are the petitioners entitled?.

7- On issue no.1 the finding of the Reference Court was that the market value awarded to the petitioner was not adequate and enhanced it @ Rs. 30/- per Sq. Ft. On issue No.2 the Reference Court enhanced the compensation of the house from 2,98,052/- to Rs. 3,4,1674/-. On issue No.3 the Reference Court gave finding that the claimants are entitled to Rs. 9,40,629=38 along with a compensation of Rs. 8,000/- which is the adequate compensation. The Reference Court has also given the finding on issue NO.4 that out the total amount of Rs. 9,48,629=38 as compensation the claimants have already received a sum of Rs. 5,42,392=26 under protest. Thus they are entitled for a further sum of Rs. 4,06,237=12 as enhanced compensation.

8- We have heard the learned counsel for the parties and have carefully examined the record of the case.

9- The learned counsel appearing behalf of the appellants has argued that the court below has committed illegality in enhancing

the rate of acquired land from Rs. 6/-per Sq. Ft. to Rs. 30/- per Sq. Ft. keeping in view the market value prevalent at the time of acquisition of the land in question. He also submitted that the court below also committed error in enhancing the valuation of the house of claimant/respondent. The assessment of the house made by the court below is based on surmises and conjectures which is liable to be set aside.

10- From the facts and evidence on record, it is clear that the land of the claimant/respondent was acquired for the purpose of Tehri Dam. The total area which was acquired by the Government vide notification dated 22-1-1983 U/S 4(1) of the Act was 8962 Sq. Ft. Therefore the compensation should be given to the claimant/respondent for the acquired area for which notification U/S 4(1) of the Act was issued. Thus the claimant/respondent are entitled to compensation for the aforesaid area and the amount he had spent for the development of the same. The Reference Court took into consideration various exemplars filed by the parties. The court below also took into consideration the various judgments filed before it in which the court has awarded Rs. 30/- per Sq. Ft. for the land of this ward and adjacent wards at uniform rate. Petitioner's witnesses P.W.3 Ram Swaroop and P.W.4, Harish Datt also deposed about the land of ward No.8 sold at the rate of Rs. 30/- and Rs. 39/- per Sq. Ft. in the years 1985 and 1996 respectively. The land in the latter case was sold by private negotiations. The Reference Court after consideration of all the documents and evidence on record, came to the conclusion that the market value awarded to the petitioner is not adequate and fixed the rate of the land in question at Rs. 30/- per Sq. Ft. on the date of notification under Section 4(1) of the Act. We do not find any infirmity in the finding of the learned District Judge on this count. Thus the claimant/respondent is entitled to get the compensation for his acquired land @ Rs. 30/-per Sq. Ft. which comes to 8962 x 30= Rs. 2,68,860-00 as was awarded by the Reference Court.

11- So far as the finding of the District Judge with regard to the compensation for construction portion is concerned, the Reference Court has taken into consideration the valuation report of the

building filed by a private valuer Sri A.S. Kataria, P.W.1 and also the valuation assessed by the P.W.D. but the Reference Court did not rely on the assessment reports of these valuers. However, it took into consideration the approved rates of construction in hills per Sq. Meter area and on applying these rates the Reference Court calculated the value of the building of the petitioner, having plinth area of 304-25 Sq. M., @ Rs. 1175/- per Sq. M. which comes to Rs. 3,57,493-75 and after deducting deprecation cost @ 9.45% the net value of the house comes to rupees 3,23,674=85. The Reference Court also awarded Rs. 18000/- for other claims of the claimant regarding less payment of retaining wall etc., making a total of Rs. 3,41,674/-, which in our opinion is just and adequate compensation.

12. Besides the above, the Reference Court also awarded solatium @ 30% and additional amount @ 12% per annum from 22.1.1983 to 23.2.1985 on the above compensation amount of Rs. 6,10,534/- which comes to Rs. 1,83,160=20 and Rs. 1,46,935=18 respectively. The Reference Court also awarded Rs. 8,000/- U/S 23(1) of the Act is incidental expenses for shifting of residence with heavy luggage and legal library thus making the gross total of Rs. 9,48,629=38.

13- On the whole the finding of the learned District Judge (Reference Court) is based on sound assessment of the evidence on record and the same does not call for any interference.

14- The appeal lacks merit and the impugned judgment and decree of the Reference Court (District Judge) dated 6-11-2001 is liable to be confirmed.

15- Accordingly the appeal is dismissed. The impugned judgment and decree dated 6-11-2001 passed by the Reference Court (District Judge, Tehri Garhwal) in Land Acquisition Reference No. 5 of 1986 is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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